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the provisions of Article 5 of the TRIMs Agreement.

Protocol Language

China shall, upon accession, comply with the TRIMs Agreement, without recourse to ~~any transition period~~. China shall eliminate and cease to enforce trade and foreign exchange balancing requirements, local content and export performance requirements made effective through laws, regulations or other measures. Moreover, China will not enforce provisions of contracts imposing such requirements. Without prejudice to the relevant provisions of this Protocol, China shall ensure that the distribution of import licenses, quotas, tariff-rate quotas, or any other means of approval for importation, the right of importation or investment by national and sub-national authorities is not conditioned on whether competing domestic suppliers of such products exist or on performance requirements of any kind, such as local content, offsets, the transfer of technology, or the conduct of research and development in China.

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POSITION TITLE: *Assistant USTR for China*
AGENCY/OFFICE: *USTR*
DECLASSIFICATION DATE / EVENT: *China's accession to the WTO*
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AGENCY/OFFICE: *USTR*
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Product-Specific Safeguard

1. In cases where products of Chinese origin are being imported into the territory of any WTO Member in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products, the WTO Member so affected may request consultations with China with a view to seeking a mutually satisfactory solution, including whether the affected Member should pursue application of a measure under the WTO Agreement on Safeguards. Any such request shall be notified to the WTO Committee on Safeguards.
2. If, in the course of these bilateral consultations, it is agreed that imports of Chinese origin are such a cause and that action is necessary, China shall take such action as to prevent or remedy the market disruption. Any such action shall be notified to the WTO Committee on Safeguards.
3. If consultations do not lead to an agreement between China and the WTO Member concerned within 60 days of the receipt of a request for consultations, the WTO Member affected shall be free, in respect of such products, to withdraw concessions or otherwise to limit imports only to the extent necessary to prevent or remedy such market disruption. Any such action shall be notified to the Committee on Safeguards.
4. Market disruption shall exist whenever imports of an article, like or directly competitive with an article produced by the domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury to the domestic industry. In determining if market disruption exists, the affected WTO Member shall consider objective factors, including the volume of imports, the effect of imports on prices for like or directly competitive articles, and the effect of such imports on the domestic industry producing like or directly competitive products.
5. Prior to application of a measure pursuant to paragraph 3, the WTO Member taking such action shall provide reasonable public notice to all interested parties and provide ^{adequate} an opportunity for importers, exporters and other interested parties to submit their views and evidence on whether or not the application of a measure ~~would be in the public interest~~. The WTO Member shall provide written notice of the decision to apply a measure, including the reasons for such measure and its scope and duration.
6. A Member shall apply a measure pursuant to this Section only for such period of time as may be necessary to prevent or remedy the market disruption. If a

the appropriateness of the proposed measure, and whether it

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measure is taken as a result of a relative increase in the level of imports, China has the right to suspend the application of substantially equivalent concessions or obligations under GATT 1994 to the trade of the Member applying the measure, if such measure remains in effect more than 2 years. However, if a measure is taken as a result of an absolute increase in imports, China has a right to suspend the application of substantially equivalent concessions or obligations under GATT 1994 to the trade of the Member applying the measure, if such measure remains in effect more than 3 years. Any such action by China shall be notified to the Committee on Safeguards.

7.

In critical circumstances, where delay would cause damage which it would be difficult to repair, the WTO Member so affected may take ~~preventive or remedial~~ provisional action provisionally. In this case, notification of the measures taken to the WTO Committee on Safeguards and a request for bilateral consultations shall be effected immediately thereafter. The duration of the provisional measure shall not exceed 200 days during which the pertinent requirements of paragraphs 1, 2 and 5 shall be met. The duration of any provisional measure shall be counted toward the period provided under paragraph 6.

8.

If a WTO Member considers that an action taken under paragraph 2, 3, or 7 causes or threatens to cause significant diversions of trade into its market, it may request consultations with China and/or the WTO Member concerned. Such consultations shall be held within 30 days after the request is notified to the WTO Committee on Safeguards. If such consultations fail to lead to an agreement between China and the WTO Member or Members concerned within 60 days after the notification, the requesting WTO Member shall be free, in respect of such product, to withdraw concessions or otherwise limit imports to the extent necessary to prevent or remedy such diversions. Such action shall be notified to the WTO Committee on Safeguards.

9.

~~[Duration]~~ Application of this Section will be terminated twelve years after entry into force of this Protocol.

Protocol Language

Price Comparability in Determining Dumping and Subsidization

WTO Members recognize the many fundamental market-based reforms that China has made to its economy. Article VI of the General Agreement on Tariffs and Trade 1994 (GATT 1994), the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping Agreement), and the Agreement on Subsidies and Countervailing Measures (SCM Agreement) shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

(1) In determining price comparability under Article VI of GATT 1994 and the Antidumping Agreement, the importing WTO Member ~~may~~ ^{shall} use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:

(a) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability.

(b) If the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China.

(2) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.

(3) The importing WTO Member shall notify methodologies used in accordance with subparagraph (1) to the Committee on Anti-dumping Practices and shall notify methodologies used in accordance with subparagraph (2) to the Committee on Subsidies and Countervailing Measures.

(4) [Duration]

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Non-Market Economy Duration

- 1527 (b) 21
- (4) Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (1) shall be terminated. In any event, the provisions of subparagraph (1) shall expire twenty years after the date of entry into force of this Protocol. ~~accession~~ In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (1) shall no longer apply to that industry or sector.
- (b) 21

provided that the importing Member's national law contain market economy criteria as of the date of entry into force of China's ~~accession~~ protocol.

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Subsidies and State-Owned Enterprises

For purposes of applying Article 1.2 and Article 2 of the Agreement on Subsidies and Countervailing Measures, without prejudice to Articles 8.2(a), 8.2(b) and 8.2(c) of the SCM Agreement, subsidies provided to state-owned enterprises will be viewed as specific if, *inter alia*, state-owned enterprises are the predominant recipients of such subsidies or state-owned enterprises receive disproportionately large amounts of such subsidies.

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**Working Party Report Language on Commercial Operation of State-Owned
and State-Invested Enterprises**

xx. In light of the role that state-owned and state-invested enterprises play in China's economy, Members expressed concerns about the continuing governmental influence and guidance on the decisions and activities of such enterprises relating to the purchase and sale of goods and services. Such purchases and sales should be based solely on commercial considerations, without any governmental influence or application of discriminatory measures.

In addition, Members indicated the need for China to clarify its understanding of the types of activities that would not come within the scope of Article III:8(a) of GATT 1994. For example, any measure relating to state-owned and state-invested enterprises importing materials and machinery used in the assembly of goods which are then exported or otherwise made available for commercial sale or use or for non-governmental purposes would not be considered to be government procurement.

xx. The representative of China emphasized the evolving nature of China's economy and the significant role of foreign-invested enterprises and the private sector in the economy. Given the increasing need and desirability of competing with private enterprises in the market, decisions by state-owned and state-invested enterprises had to be based on commercial considerations as provided in the WTO.

xx. The representative of China confirmed that China would ensure that all state-owned and state-invested enterprises will make purchases and sales based solely on commercial considerations, e.g., price, quality, marketability, availability, and that the enterprises of other WTO members will have an adequate opportunity to compete for sales to and purchases from these enterprises on non-discriminatory terms and conditions. In addition, China's government would not influence, directly or indirectly, commercial decisions on the part of state-owned or state-invested enterprises, including the quantity, value or country of origin of any goods purchased or sold, except in a manner consistent with the WTO. The Working Party took note of these commitments.

xx. China confirmed that, without prejudice to China's rights in future negotiations in the Government Procurement Agreement, all laws, regulations and measures relating to the procurement by state-owned and state-invested enterprises of goods and services for commercial sale, production of goods for commercial sale or for non-governmental purposes would not be considered to be government procurement. Thus, such purchases or sales would be subject to the provisions of Articles II, XVI and XVII of the GATS and Article III of GATT 1994. The Working Party took note of this commitment.

xx. Members expressed concern about laws, regulations and measures in China affecting the transfer of technology, in particular in the context of investment decisions. Moreover, Members of the Working Party expressed concern about measures conditioning the receipt of benefits, including investment approvals, upon technology transfer. In their view, the terms and conditions of technology transfer, particularly in the context of an investment, should be agreed between the parties to the investment without government interference. The government should

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not, for example, condition investment approval upon technology transfer.

not inconsistent

xx. China confirmed that it will only impose, apply or enforce laws, regulations or measures relating to the transfer of technology, production processes, or other proprietary knowledge to an individual or enterprise in its territory that are ~~in accordance~~ with the WTO Agreements on Trade-Related Aspects of Intellectual Property Rights and Trade-Related Investment Measures. China confirmed that the terms and conditions of technology transfer, production processes or other proprietary knowledge, particularly in the context of an investment, will be agreed between the parties to the investment. The Working Party took note of these commitments.

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DRAFT LANGUAGE ON TEXTILES - *For working Party Report*

xx. Some members of the Working Party proposed and the representative of China accepted that the quantitative restrictions maintained by WTO Members on imports of textiles and clothing *apparel* products originating in China that are in force on the date prior to the date of the accession of China to the WTO shall be notified to the textiles Monitoring Body (TMB) as being the base levels for the purpose of application of Articles 2 and 3 of the WTO Agreement on Textiles and Clothing. For such Members, the phrase "day prior to the date of entry into force of the WTO Agreement," contained in Article 2.1 of the Agreement on Textiles and Clothing shall be deemed to refer to the day prior to the date of accession of China to the WTO. To these base levels, the increase in growth rates provided for in Articles 2.13 and 2.14 of the Agreement on Textiles and Clothing shall be applied, as appropriate, from the date of accession of China to the WTO. Further, China agreed that the following provisions would apply to trade in textile and clothing products until 31 December 2008 and be part of the terms and conditions for China's accession to the WTO *maintaining and notifying restrictions on imports of textiles and apparel from China*

- a bilateral textile agreement with China*
- (A) In the event that a WTO Member believes that imports of Chinese origin of textiles and apparel products covered by the Agreement on Textiles and Clothing as of the date the WTO Agreement entered into force, are, due to market disruption, threatening to impede the orderly development of trade in these products, such member may request consultations with China with a view to easing or avoiding such market disruption. The Member requesting consultations shall provide China, at the time of the request, with a detailed factual statement of reasons and justifications for its request for consultations with current data which, in the view of the requesting Member, shows: (1) the existence or threat of market disruptions; and (2) the role of products of Chinese origin to that disruption.
- (B) Consultations will be held within 30 days of receipt of the request. Every effort will be made to reach agreement on a mutually satisfactory solution within 90 days of the receipt of such request, unless extended by mutual agreement.
- (C) Upon receipt of the request for consultations, China agrees to hold its shipments to the requesting Member of textile or textile products in the category or categories subject to these consultations to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request for consultations was made.
- (D) If no mutually satisfactory solution is reached during the 90-day consultation period, consultations shall continue and the Member requesting consultations may continue the limits for textiles or textile products in the category or categories subject to these consultations.
- (E) The term of any restraint limit established under sub-paragraph D will be effective for the period beginning on the date of the request for consultations and ending on 31 December of the year in which consultations were requested, or where three or fewer months remain

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in the year at the time of the request for consultations, for the period ending 12 months after the request for consultations.

- (F) No action taken under this provision shall remain in effect beyond one year, without reapplication, unless otherwise agreed.

The Working Party took note of these commitments.

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Working Party Report Language On Services

xx. China confirmed that, while it had limited its market access commitments in some sectors to permit foreigners to hold only a minority equity interest, a minority shareholder can enforce, under China's laws, regulations and measures, rights in the investment. Moreover, WTO Members will have recourse to WTO dispute settlement to ensure implementation of all commitments in China's GATS schedule. The Working Party took note of these commitments.

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